



FEDERAL ELECTION COMMISSION
WASHINGTON, D C 20463

OCT 22 2001

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

National Republican Senatorial Committee
and Stan Huckaby, Treasurer
425 Second Street, N.E.
Washington, DC 20002

RE: MUR 5094
National Republican Senatorial Committee
and Stan Huckaby, Treasurer

Dear Mr. Huckaby.

On September 25, 2001, the Federal Election Commission found that there is reason to believe the National Republican Senatorial Committee and you, as treasurer, violated 2 U.S.C. § 433(b)(2), a provision of the Federal Election Campaign Act of 1971, as amended, ("the Act") and 11 C.F.R. § 102.17(c), a provision of the Commission's regulations. The Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information.

You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Statements should be submitted under oath. All responses to the enclosed Order to Submit Written Answers and Subpoena to Produce Documents must be submitted within 30 days of your receipt of the order and subpoena. Any additional materials or statements you wish to submit should accompany the response to the order and subpoena. In the absence of additional information, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

You may consult with an attorney and have an attorney assist you in the preparation of your responses to this order and subpoena. If you intend to be represented by counsel, please advise the Commission by completing the enclosed form stating the name, address, and telephone number of such counsel, and authorizing such counsel to receive any notifications and other communications from the Commission.

If you are interested in pursuing pre-probable cause conciliation, you should so request in writing. See 11 C.F.R. § 111.18(d). Upon receipt of the request, the Office of the General Counsel will make recommendations to the Commission either proposing an agreement in

National Republican Senatorial Committee
and Stan Huckaby, Treasurer
Page 2

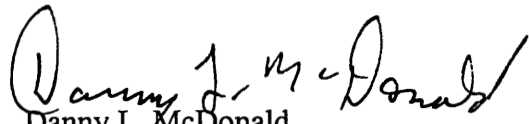
settlement of the matter or recommending declining that pre-probable cause conciliation be pursued. The Office of the General Counsel may recommend that pre-probable cause conciliation not be entered into at this time so that it may complete its investigation of the matter. Further, requests for pre-probable cause conciliation will not be entertained after briefs on probable cause have been mailed to the respondent.

Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A) unless you notify the Commission in writing that you wish the investigation to be made public.

For your information, we have attached a brief description of the Commission's procedures for handling possible violations of the Act. If you have any questions, please contact Kamau Philbert, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,


Danny L. McDonald
Chairman

Enclosures
Order and Subpoena
Factual and Legal Analysis
Procedures
Designation of Counsel Form

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of

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) MUR 5094
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ORDER TO SUBMIT WRITTEN ANSWERS AND
SUBPOENA TO PRODUCE DOCUMENTS

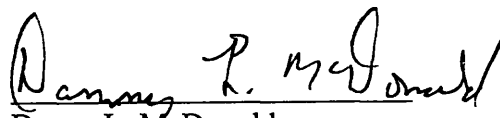
TO: National Republican Senatorial Committee
and Stan Huckaby, as Treasurer
425 Second Street, N.E.
Washington, DC 20002

Pursuant to 2 U.S.C. § 437d(a)(1) and (3), and in furtherance of its investigation in the above-captioned matter, the Federal Election Commission hereby orders you to submit written answers to the questions attached to this Order and subpoenas you to produce the documents requested on the attachment to this Subpoena. Legible copies, which, where applicable, show both sides of the documents, may be substituted for originals.

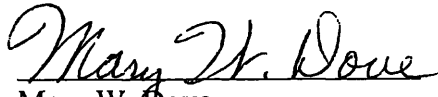
Such answers must be submitted under oath and together with the requested documents must be submitted to the Office of the General Counsel, Federal Election Commission, 999 E Street, N.W., Washington, D.C. 20463, within 30 days of receipt of the Order and Subpoena.

WHEREFORE, the Chairman of the Federal Election Commission has hereunto set his hand in Washington, D.C., on this *22nd* day of *October*, 2001.

For the Commission,


Danny L. McDonald
Chairman

ATTEST.


Mary W. Dove
Secretary to the Commission

Attachments

Interrogatories and Requests for Production
of Documents with Instructions and Definitions

INSTRUCTIONS

In answering this subpoena for production of documents, furnish all documents and other information, however obtained, including hearsay that is in possession of, known by or otherwise available to you, including documents and information appearing in your records.

Each answer is to be given separately and independently, and unless specifically stated in the particular discovery request, no answer shall be given solely by reference either to another answer or to an exhibit attached to your response.

The response to each interrogatory propounded herein shall set forth separately the identification of each person capable of furnishing testimony concerning the response given, denoting separately those individuals who provided informational, documentary or other input, and those who assisted in drafting the interrogatory response.

If you cannot answer the following interrogatories in full after exercising due diligence to secure the full information to do so, answer to the extent possible and indicate your inability to answer the remainder, stating whatever information or knowledge you have concerning the unanswered portion and detailing what you did in attempting to secure the unknown information.

Should you claim a privilege with respect to any documents, communications, or other items about which information is requested by any of the following interrogatories and requests for production of documents, describe such items in sufficient detail to provide justification for the claim. Each claim of privilege must specify in detail all the grounds on which it rests

The terms used in the document requests and interrogatories shall be deemed to include both singular and plural as necessary to bring within the scope of these interrogatories and requests for the production of documents any documents and materials which may otherwise be construed to be out of their scope.

Unless otherwise indicated, the discovery request shall refer to the time period from August 1, 2000 to the present.

This subpoena is continuing in nature so as to require you to file supplementary responses or amendments during the course of this investigation if you obtain further or different information prior to or during the pendency of this matter. Include in any supplemental answers the date upon which and the manner in which such further or different information came to your attention.

DEFINITIONS

For the purpose of this discovery request, including the instructions thereto, the terms listed below are defined as follows:

"You" shall mean the named respondents in this action to whom these discovery requests are addressed, including any affiliated committee(s), and all officers, employees, whether paid or unpaid; supervisors; volunteers; agents or persons otherwise working on behalf of or at the request of the named respondents or an affiliated committee; co-workers; subordinates; staff or attorneys thereof.

The "Republican Party of Florida" shall mean the named entity, including the Republican Party of Florida Federal Campaign Account, any nonfederal account(s), any affiliated committees, and all officers, employees, whether paid or unpaid; supervisors; volunteers; agents or persons otherwise working on behalf of or at the request of those entities.

"Persons" shall be deemed to include both singular and plural, and shall mean any natural person, partnership, committee, association, corporation, or any other type of organization or entity.

"Document" shall mean the original and/or accurate and complete copies, and all non-identical copies, including drafts, of all papers and records of every type in your possession, custody, or control, or known by you to exist. The term document includes, but is not limited to books, letters, contracts, notes, diaries, log sheets, records of telephone communications, transcripts, vouchers, accounting statements, ledgers, checks, money orders or other commercial paper, telegrams, telexes, pamphlets, circulars, leaflets, reports, memoranda, correspondence, surveys, tabulations, audio and video recordings, drawings, photographs, graphs, charts, diagrams, lists, electronic communications, computer print-outs, and all other writings and other data compilations, including information contained on computer disks and hard drives, from which information can be obtained.

"Communications" shall be deemed to include both singular and plural, and to include written, oral and electronic communications

"Identify" with respect to a person shall mean state the full name, the most recent business and residence addresses and the residential, business and cellular telephone numbers and servers, the present occupation or position of such person, the nature of the connection or association that person has to any party in this proceeding. If the person to be identified is not a natural person, provide the legal and trade names, the address and telephone number, and the full names of both the chief executive officer and the agent designated to receive service of process for such person

"Identify" with respect to a document shall mean state the nature or type of document (e.g , letter, memorandum), the date, if any, appearing thereon, the date on which the document was prepared, the title of the document, the general subject matter of the document, the location of the document, the number of pages comprising the document.

"And" as well as "or" shall be construed disjunctively or conjunctively as necessary to bring within the scope of these interrogatories and request for the production of documents any documents, materials and information which may otherwise be construed to be out of their scope.

INTERROGATORIES AND REQUESTS FOR THE PRODUCTION OF DOCUMENTS

1. Describe any relationship, affiliation, dealings, or transactions you have had with any of the following individuals and entities concerning a September 22, 2000 fund-raiser with former President George Bush held at the Wyndham Hotel, 1601 Biscayne Blvd , Miami, Florida

- a. Bill McCollum
- b. Bill McCollum for U.S. Senate and Richard L. Pilhorn, as Treasurer
- c. McCollum Victory Committee and D. Jan McBride, as Treasurer
- d. Republican Party of Florida and Paul J. Bedinghaus, as Treasurer
- e. John Thrasher

2. Describe your involvement or participation in the fundraiser described in Question 1 above.

3. State whether you received any moneys, gifts, loans, advance, or anything of value from, or in connection with, the September 22, 2000 fund-raiser described in Question 1 above. If so, list the amount of any such moneys, gifts, loans, advance, or thing of value and identify each corresponding individual or entity.

4 State whether you made any payment, purchase, distribution, loan, advance, deposit, gift of money or anything of value, or any other disbursement to, or in connection with, the above September 22, 2000 fund-raiser.

5 If any payment, purchase, distribution, loan, advance, deposit, gift of money or anything of value, or any other disbursement was made in response to Question 4 above, identify each corresponding individual or entity and set forth the amount, date and circumstances of each payment, purchase, distribution, loan, advance deposit, gift of money or thing of value, or other disbursement

6. State whether you received any moneys, gifts, loans, advance, or anything of value from, or on behalf of, Bill McCollum, Bill McCollum for U.S. Senate or McCollum Victory Committee between August 1, 2000 and December 31, 2000. If so, list the amount of any such moneys, gifts, loans, advance, or thing of value and identify each corresponding individual or entity.

7. Produce any and all documents relating to any payment, purchase, distribution, loan, advance, deposit, gift of money or anything of value, or other disbursement made in response to Questions 4 and 5 above.

8. Produce any and all documents relating to any receipt of moneys, gifts, loans, advance, or anything of value in response to Questions 3 and 6 above.

9. The Statement of Organization of McCollum Victory Committee on file with the Commission shows that you are a joint fundraising participant with Bill McCollum for US Senate in that joint fundraising committee. Produce the joint fundraising agreement involving McCollum Victory Committee.

10. Produce copies of all invitations, solicitations, or other mailings relating to the September 22, 2000 fund-raiser described in Question 1 above, including any corresponding mailings by John Thrasher.

11. To the extent not already produced, produce copies of all documents referred to in your responses to the above interrogatories, and all documents used to prepare your responses to the above interrogatories.

12. Identify each individual who assisted in the preparation of these responses to interrogatories and requests for the production of documents.

13. Describe your document retention and destruction practices and identify the person(s) responsible for ensuring that documents are properly retained and destroyed. If such practices are reflected in documents, produce the documents. State whether any documents responsive to the above interrogatories were destroyed and, if so, identify such document(s)

FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENTS: National Republican Senatorial Committee
and Stan Huckaby, as Treasurer

MUR 5094

I. GENERATION OF MATTER

This matter was generated based on information ascertained by the Federal Election Commission ("the Commission") in the normal course of carrying out its supervisory responsibilities. See 2 U.S.C. § 437g(a)(2).

II. FACTUAL AND LEGAL ANALYSIS

A. Facts

A September 8, 2000 article in the Miami Herald newspaper reported that former Florida House Speaker John Thrasher sent out an invitation that billed a \$20,000-per-ticket fundraising luncheon as a benefit for the U.S. Senate campaign of U.S. Representative Bill McCollum.¹ The article also reported that the Republican Party of Florida would maintain corporate money earmarked for McCollum. *See* Mark Silva *et al.* *Republicans Collect Funds from Corporations for Florida Candidates*, Miami Herald, September 8, 2000.

According to the article, the luncheon was scheduled for September 22, 2000 and featured former President George Bush. The article reported that, although the state party said that the proceeds would benefit all its candidates in Florida, the invitation issued by Thrasher billed the luncheon as a benefit for McCollum's U.S. Senate campaign. The article included a quote from

¹ McCollum lost the general election with 46 percent (46%) of the vote to Democrat Bill Nelson

Don Simon, General Counsel for Common Cause, a public interest group, stating that "[t]he most revealing thing about this invitation is the stark admission that a corporate contribution is intended to help McCollum." The article also concluded that by collecting checks for the state party -- unlimited by law in what it can raise -- the state party effectively was bypassing federal limits that prohibit corporate contributions to Senate candidates and restrict to \$2,000 the amount that an individual can donate to McCollum's Senate campaign.

According to the article, McCollum and the state party maintained that the corporate money would not be earmarked for McCollum alone -- although it was acknowledged that McCollum would benefit, "no question about it." The article further quoted McCollum as stating "I'm fighting fire with fire. I'm not going to campaign with one hand tied behind my back . If Bill Nelson weren't doing this, I wouldn't be doing this " The article reported that both candidates have created separate federal "victory committees" in addition to their own Senate campaigns or any party fundraising, enabling donors to write big checks -- a trend in high-stakes Senate races. Finally, the article reported that McCollum stated that he would collect \$1,000 checks for his own Senate campaign and personal donations up to \$20,000 for his victory committee. In addition, he would "net" corporate checks of \$20,000 for the state party's use

Review of the Commission's indices and database shows that between September and December 2000 McCollum's Senate committee received a total of \$25,708 in transfers from McCollum Victory Committee ("Victory Committee"), a joint fundraising committee authorized

by McCollum's Senate committee.² The 2000 October Quarterly Report, Schedule A, for McCollum's Senate committee shows receipt of a \$5,000 transfer from the Victory Committee on September 29, 2000. An attached memo schedule shows that the \$5,000 transfer consisted of nine individual contributions ranging from \$250 to \$1,000. The committee's Year End Report, Schedule A, also disclosed receipt of an additional transfer of \$20,708 from the Victory Committee to McCollum's Senate committee on December 19, 2000. The memo schedule for those contributions shows that the transfer consisted of 24 individual contributions ranging from \$100 to \$1,000 and a \$1,000 contribution from a limited liability company (LLC).

According to the Victory Committee's 2000 October Quarterly Report, Schedule A, it received \$197,550 in contributions from individuals from what appears to be the September 22, 2000 fund-raiser mentioned in the newspaper article.³ The bulk of these contributions were in amounts of \$5,000 to \$20,000 and was from corporate executives and their families, and self-employed or retired individuals. The committee received another \$10,000 (\$5,000 each) from two political action committees (PACs). In addition to the \$5,000 transfer from the Victory Committee to McCollum's Senate committee, \$182,000 was transferred to the NRSC's federal account on September 28, 2000. The Victory Committee's 2000 Year End Report, Schedule B,

² Commission records show that the Victory Committee was established on August 8, 2000 as a joint fundraising committee in participation with McCollum's Senate committee and the National Republican Senatorial Committee ("NRSC"). On February 9, 2001, the Victory Committee submitted a Termination Report to the Commission's Reports and Analysis Division ("RAD") requesting to terminate operations. According to the Termination Report, the committee transferred all of its cash on hand (\$69,193) to the NRSC on February 8, 2001. On April 13, 2001, RAD advised the committee that its termination was accepted and it was no longer required to file periodic reports with the Commission.

³ The Victory Committee reported disbursements of \$1,332.91 for food and beverages at the Wyndham Hotel on September 21, 2000, the day before the fund-raiser at issue.

shows the additional transfer of \$20,708 to McCollum's Senate committee on December 19, 2000.

The NRSC's 2000 October Monthly Report, Schedule A, shows receipt of the \$182,000 transfer from the Victory Committee on September 29, 2000. It also showed a transfer of \$257,700 in federal funds to the Republican Party of Florida on September 19, 2000 and a \$1,000 earmarked contribution to McCollum's campaign on September 6, 2000. A further review of Schedule I of the NRSC's report shows the receipt of transfers of non-federal funds from several other "victory committees" during September 2000 but none from the McCollum Victory Committee.

The available information indicates that the corporate contributions raised at the event were deposited into the Republican Party of Florida's non-federal account. A review of the state party reports on the Florida Department of State website shows receipt of a total of 13 contributions during the month of September 2000 in the \$20,000 amount alleged in the complaint. Six of those contributions were from corporations; an additional six were from individuals and one from the Republican National State Election Committee.

B. Law

Section 441b(a) of the Act prohibits corporations from making contributions or expenditures in connection with a Federal election and prohibits a political committee from knowingly accepting or receiving corporate contributions 2 U S C § 441b(a) This broad prohibition extends to "anything of value" given to any candidate or campaign in connection with any Federal election 2 U S C § 441b(b)(2)

The Act also provides that each authorized campaign committee shall file a statement of organization no later than 10 days after being designated as such. All other committees shall file a statement of organization within 10 days after becoming a political committee. 2 U.S.C.

§ 433(a). Among other items, the statement of organization shall include the name, address, relationship, and type of any connected organization or affiliated committee. 2 U.S.C. § 433(b)

As pertinent herein, the Commission's joint fundraising regulations at 11 C.F.R. § 102.17(c)(1) require that the participants in a joint fundraising activity enter into a written agreement, which shall identify the fundraising representative and shall state a formula for the allocation of fundraising proceeds. The formula shall be stated as the amount or percentage of each contribution received to be allocated to each participant. The fundraising representative shall retain the written agreement for a period of three years and shall make it available to the Commission on request.

The regulations also provide that a joint fundraising notice shall be included with every solicitation for contributions. 11 C.F.R. § 102.17(c)(2) The notice shall include the names of all participating committees, the allocation formula to be used; a notice that, notwithstanding the stated allocation formula, contributors may designate their contributions for a particular participant(s), and a notice that the allocation formula may change if a contributor makes a contribution which would exceed the amount that a contributor may give to any participant. 11 C.F.R. § 102.17(c)(2)(i) The notice also requires that, if one or more participants can lawfully accept contributions that are prohibited under the Act, a statement informing

contributors that contributions from prohibited sources will be distributed only to those participants that can accept them. 11 C.F.R. § 102.17(c)(2)(ii).

11 C.F.R. § 102.17(c)(3)(i) provides that the participants or the fundraising representative shall establish a separate depository account to be used solely for the receipt and disbursement of the joint fundraising proceeds. All contributions deposited into the separate depository account must be permissible under the Act. Each political committee shall amend its Statement of Organization to reflect the account as an additional depository.⁴ If one or more participants can lawfully accept contributions that are prohibited under the Act, the participants may either establish a second depository account for contributions received from prohibited sources or they may forward such contributions directly to the nonfederal participants.

The regulations further provide that the fundraising representative shall also keep a record of the total amount of contributions received from prohibited sources, if any, and of all transfers of prohibited contributions to participants that can accept them. 11 CFR § 102.17(c)(4)(ii). Finally, the fundraising representative shall report all funds received in the reporting period in which they are received. The fundraising representative shall report the total amount of contributions received from prohibited sources during the reporting period, if any, as a memo entry. Each Schedule A filed by the fundraising representative under this section shall clearly indicate that the contributions reported on that schedule represent joint fundraising proceeds.

11 CFR § 102.17(c)(8)(i)(A)

⁴ According to Commission records, both the NRSC and McCollum's Senate committee amended their Statement of Organization on August 8 and 9, 2000, respectively, to reflect the Victory Committee as an additional depository

C. Analysis

The available information shows that the September 22, 2000 fund-raiser raised both federal and non-federal funds, and that the corporate funds raised were deposited into the Republican Party of Florida's non-federal account. However, based on the available information, it is unclear how, legally or factually, the state party came to receive a share of the proceeds of the fund-raiser when it does not appear as a participant in the joint fundraising activity. Legally, the Victory Committee's Statement of Organization shows only McCollum's Senate committee and the NRSC as participants, and under 11 C.F.R. § 102.17(c)(3)(i) only joint fundraising participants may receive non-federal proceeds from joint fundraising activity. Factually, the available information does not show any transfer of non-federal funds from the Victory Committee or the NRSC to the state party during the relevant period.

As previously mentioned, the Commission's regulations provide for receipt of non-federal funds and specify the procedure for their receipt. Those regulations provide that if one or more participants can lawfully accept non-federal contributions, the participants may either establish a second depository account for contributions received from prohibited sources or they may forward such contributions directly to the nonfederal participant(s). See 11 CFR § 102.17(c)(3)(i) (emphasis added). The available information indicates that corporate funds were forwarded directly to the state party improperly. Since it does not appear that the NRSC, as the only participant lawfully permitted to accept non-federal funds, established a separate depository account to receive non-federal funds, the available information suggests that the parties elected to forward non-federal funds directly to the state party without disclosing it as a

National Republican Senatorial Committee
and Stan Huckaby, as Treasurer

F&LA

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participant on the Victory Committee's Statement of Organization. Therefore, it appears that the NRSC did not comply with the above provision of the joint fundraising regulations.

Accordingly, there is reason to believe that the National Republican Senatorial Committee and Stan Huckaby, as Treasurer, violated 11 CFR § 102.17(c). In addition, by failing to include the state party as a participant in the Victory Committee's Statement of Organization, there is reason to believe the National Republican Senatorial Committee and Stan Huckaby, as Treasurer, violated 2 U.S.C. § 433(b)(2).